

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

January 24, 2012

In the Matter of A. DUENSING and J.
DUENSING, Minors.

No. 304687
Berrien Circuit Court
Family Division
LC No. 2010-000030-NA

Before: HOEKSTRA, P.J., and MARKEY and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right the order of the trial court terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). For the reasons set forth in this opinion, we affirm.

Respondent's children were removed from her care because of substance abuse and neglect of the children. After the children were removed from her care, respondent was given a parent agency treatment plan to work toward reunification but did not comply with most aspects of the plan. Specifically, respondent repeatedly tested positive for substances, often failed to participate in substance screens, failed to complete parenting classes, and failed to visit consistently with the children. After several months respondent agreed to participate in substance abuse treatment, but failed to attend most of the sessions. After approximately 14 months of services, with respondent showing virtually no progress, the trial court terminated her parental rights.

Respondent first contends that termination of her parental rights under subsections (3)(c)(i) and (g) was a denial of due process. To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been demonstrated by clear and convincing evidence. *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). In this case, a review of the record supports the trial court's finding that termination of respondent's parental rights was warranted under subsection (3)(c)(i) because the condition that led to adjudication, primarily respondent's substance abuse, continued to exist and there was no reasonable likelihood that the condition would be rectified within a reasonable time considering the ages of the children. Respondent failed to consistently participate in services and continued to test positive for substances even in the weeks leading to the termination hearing.

Similarly, a review of the record supports the trial court's finding under subsection (3)(g) that respondent failed to provide proper care and custody for the children and that there was no reasonable expectation that she would be able to do so within a reasonable time considering the

ages of the children. During the approximately 14 months between removal and termination, respondent continually tested positive for cocaine, failed to attend drug screenings and eventually admitted her cocaine use. During this time she only sporadically and half-heartedly participated in services, often missing or failing drug screens, and missing visitation with the children. A parent's failure to comply with the parent agency agreement is evidence of failure to provide proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

Though respondent couches her challenge to the trial court's findings as a due process challenge, respondent does not explain her challenge nor does she specify whether her contention involves a procedural or substantive due process challenge. The due process guarantees of the federal and Michigan constitutions, US Const, Ams V and XIV; Const 1963, art 1, § 17, apply to the adjudication of important rights and impose constraints on government decisions that deprive individuals of liberty or property interests within the meaning of the Due Process Clause. See e.g. *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993). Parents have a significant liberty interest in the custody of their children and that interest is an element of liberty protected by due process. *In re JK*, 468 Mich at 210.

Fundamental fairness is the essence of due process. *In re Beck*, 287 Mich App 400, 401; 788 NW2d 697 (2010), affirmed on other grounds 488 Mich 6. The requirements of procedural due process are notice and a meaningful opportunity to be heard before an impartial decision maker. *Id.* at 401-402; *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 213-214; 761 NW2d 293 (2008). By contrast, a claim of a deprivation of substantive due process is the arbitrary deprivation of a liberty or property interest. *Beck*, 287 Mich App at 401-402. A successful claim of deprivation of substantive due process must show that the action alleged was so arbitrary, in the constitutional sense, that it shocks the conscience. *Id.*; *Mettler Walloon, LLC*, 281 Mich App at 200. In this case, respondent does not explain her due process challenge and does not identify whether she believes the deprivation was substantive or procedural. Based on our review of the record and the evidentiary support for the trial court's determination we cannot find any due process violation.

For the same reasons, we also conclude that the trial court did not clearly err in determining that termination of respondent's parental rights was in the best interests of the children. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). Respondent argues that the trial court should have ordered a guardianship for the children as a less drastic measure than termination of her parental rights. Prior to the termination hearing, the trial court directed petitioner to broach the subject of guardianship with the grandparents. According to a foster care worker assigned to the case, she discussed guardianship with the grandparents but the grandparents were not in favor of a guardianship because they feared ongoing disruptive behavior by respondents resulting in further distress for the children, and instead planned to adopt the children. In its ruling from the bench, the trial court specifically addressed the issue of a guardianship and determined that a guardianship would not provide the stability and permanence that these children required. While a trial court may establish a guardianship in lieu of termination, see MCL 712A.19a, the trial court in this case did not err in terminating respondent's parental rights upon finding that it was in the children's best interests, regardless of whether a guardianship had been contemplated. See *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999). We concur with the findings of the trial court that a guardianship would not provide the stability and permanence for either the minor children or respondent.

Accordingly, we assign no error to the trial court's decision not to appoint a guardian in this case.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

/s/ Stephen L. Borrello